IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs September 27, 2007

STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES v. NANCY JANE OLIVER AND BILLY WILEY, SR.

IN THE MATTER OF B.D.W. AND B.W.W.

Appeal from the Juvenile Court for Maury County
Nos. 64795 & 64796 George L. Lovell, Judge

No. M2007-00844-COA-R3-PT - Filed December 26, 2007

This is a termination of parental rights case involving mentally challenged parents. The mother and father had two children, one born in 2002 and the other in 2003. The mother and father were never married. The Department of Children's Services became involved with the family very soon after each child was born, providing several months of parenting services focused on basic child care. These efforts were largely unsuccessful, and the children failed to thrive. Psychological evaluations of the parents indicated that neither the mother nor the father were mentally or emotionally competent to raise a child. In February 2004, the children were found to be dependent and neglected and taken into protective custody. After removal of the children, parenting services were provided for several more months, with little success. In October 2005, the Department of Children's Services filed this petition to terminate the parental rights of the mother and the father. After a hearing, the juvenile court granted the petition, finding as grounds for termination mental incompetence, persistence of conditions, substantial noncompliance with permanency plans, failure to establish a suitable home despite reasonable efforts by the Department of Children's Services, and abandonment for willful failure to pay child support. Both the mother and father appeal this order. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which, ALAN E. HIGHERS, P.J., W.S., and W. FRANK CRAWFORD, J., joined.

Gary Howell, Mt. Pleasant, Tennessee, for the appellants, Nancy Jane Oliver and Billy Wiley, Sr.

Robert E. Cooper, Jr., Attorney General and Reporter, and Douglas Earl Dimond, Senior Counsel, for the State of Tennessee, Department of Children's Services

OPINION

In this parental termination case, there was timely intervention by child protection authorities, substantial assistance to the parents, and diligent efforts by the parents to regain custody of their children. Sadly, despite good faith efforts by all parties, the facts nevertheless compel the termination of parental rights.

Nancy Jane Oliver ("Mother") and Billy Wiley, Sr. ("Father") lived together but never married. They had two children, B.D.W. born November 18, 2002, and B.W.W. born December 11, 2003.[1]

The family came to the attention of the Tennessee Department of Children's Services ("DCS") shortly after the first child, B.D.W., was born. Just before Thanksgiving 2002, approximately three days after B.D.W. was born, Rosaline Daniels ("Daniels"), a Community Services Agency prevention case manager, received an emergency referral from DCS, based on reports indicating that B.D.W. was being neglected. After receiving the referral, Daniels began making weekly visits to the parents' home, to provide basic instructions on how to take care of the child. Daniels' efforts focused on teaching Mother how and when to feed her child and the importance of dressing him in warm clothes in cold weather. Daniels made periodic visits to Mother's and Father's home for a period of several months.

Despite the fact that she had already visited the parents' home several times, during a visit in January 2003, Daniels noticed that Mother's and Father's house was unusually cold. When she checked on B.D.W. in his bassinet, she found that he was not wearing socks and that his hands and feet were very cold. Daniels told Mother that the house needed to be warm for B.D.W. Mother responded that their utility bill was high, and that she and Father got too hot if they kept the heat on. In addition, Daniels found mouse droppings on the kitchen counter and in the drawer where B.D.W.'s milk bottle tops were kept.

The parties' second child, B.W.W., was born on December 11, 2003. In January 2004, soon after B.W.W. was born, a nurse practitioner expressed concern to DCS about the baby's failure to thrive. DCS contacted Jennifer Taylor ("Taylor"). Taylor worked for the Help Us Grow Successfully (HUGS) program, which sends a social worker into homes to teach parenting and developmental skills to new parents. Taylor began visiting Mother's and Father's home to work with Mother on a feeding schedule for B.W.W., and to show Mother how to swaddle and rock a baby. Taylor tried to establish written feeding schedules for the child, to no avail. Taylor also worked on the developmental delays of the parties' older child, B.D.W.

After all of these efforts, DCS officials came to believe that neither Mother nor Father was competent to care for their two children. Consequently, on February 6, 2004, DCS filed a petition

[1] Orders of paternity were entered on March 1 and March 3, 2004, naming Father as the biological father of both children.

with the Maury County Juvenile Court seeking temporary custody of B.D.W. and B.W.W., alleging that the children were dependent and neglected. The petition stated that, after a nurse at the Tennessee Department of Health expressed concern about B.W.W.'s development, the child was diagnosed with "non-organic failure to thrive" based on his extremely low weight gain. The petition alleged that Mother brought both children to B.W.W.'s newborn health screening, and B.D.W. became sick and vomited while there; when this occurred, Mother told a nurse that she did not know what to do with a sick child. The Juvenile Court granted the DCS petition on the same day that it was filed, finding B.D.W. and B.W.W. to be dependent and neglected and placing them in the temporary custody of DCS.

After the children were taken into protective custody, on February 27, 2004, the DCS case manager, Iris Sprowl ("Sprowl"), prepared a permanency plan for B.W.W. The goal of this plan was reunification with the parents. The plan also stated that, although Mother and Father loved their children, they still needed to learn how to adequately care for them. The plan also stated that a psychological evaluation of Mother and Father was needed in order to determine their parenting abilities. To help Mother and Father comply with the plan, Sprowl arranged for Mother and Father to meet with a licensed senior psychological examiner, and for them to attend a series of parenting classes.

Mother and Father were evaluated by the licensed senior psychological examiner, Dr. William Vaughan ("Dr. Vaughan"), on March 21, 2004 and April 12, 2004. Mother and Father came to the evaluation together. At the time, they had regained temporary custody of their older child, B.D.W., and they brought him to the evaluation. Both sessions lasted 2½-3 hours. Dr. Vaughan prepared separate reports for Mother and for Father.

Dr. Vaughan noted at the outset that his social history data for Mother was limited because she was unable to complete the intake form. He reported that Mother was forty-four years old and unemployed. She dropped out of school in the seventh grade and, at the time of the evaluation, was receiving disability income. Mother reported that she did not have a bank account, and an unnamed third party "takes care of my bills." She had no driver's license and no telephone. When asked about her children, Mother told Dr. Vaughan that "they" had taken her child and indicated that she did not understand why this had happened. Dr. Vaughan noted that B.D.W. slept the entire time for both sessions. When he inquired about this, Mother told him that B.D.W. slept most of the day and was awake "at night." Neither Mother nor Father appeared to think that this was a problem.

Dr. Vaughan administered several tests to Mother to measure her intelligence, acquired knowledge, and cognitive ability. Mother had a standard score of 69, which was deemed "intellectually deficient." Dr. Vaughan's report explained that this meant that, overall, Mother was functioning at an age equivalent level of a first grade child. In several areas, such as verbal comprehension, Mother was functioning at the level of a kindergarten-age child. She was described as "functionally illiterate" with reading and math skills below the first grade level.

In order to assess Mother's parenting needs and limitations, Dr. Vaughan attempted to read aloud to Mother questions from the Parenting Stress Index. He reported, however, that Mother "was unable to understand the questions when presented verbally."

Dr. Vaughan concluded that Mother:

> . . . does not have the cognitive resources or coping skills necessary to provide for the care and supervision of a minor child. She lacks the intellectual resources needed to understand the basic developmental needs of children, and to respond to those needs appropriately.

A similar report was prepared as to Father. As with Mother, Dr. Vaughan stated that his social history data was limited because Father was unable to complete the intake form. Like Mother, Father was forty-four years old and dropped out of school in the seventh grade. Father's records indicated that, when he was 17 years old, he was assaulted with a metal pipe and sustained a skull fracture; he was subsequently "placed on disability." The report stated that Father was "on a medical regimen to stabilize the brain-behavior impact of his brain trauma." He took sleeping medicine, but still reported getting only 2-3 hours of sleep per night. He also took medication to prevent him from "hearing voices."

Like Mother, Father received disability income and a guardian took care of his bills. Also like Mother, Father did not understand why his child was taken into protective custody.

Tests administered by Dr. Vaughan indicated that Father had a distorted self-image, significant anxiety, hypervigilance, and a tendency to overreact emotionally. Intelligence tests yielded a score of 75, which fell in the "borderline" range. The report explained that, overall, Father was functioning at the level of a second grade child; his verbal ability was at the level of a first grade child. Similar to Mother, Father's reading and math skills were below a first grade level, and he was deemed "functionally illiterate."

Dr. Vaughan also attempted to read to Father questions from the Parenting Stress Index, designed to assess his parenting needs or limitations. Like Mother, Father was unable to understand the questions.

Not surprisingly, Dr. Vaughan also concluded that Father "does not have the cognitive resources or coping skills necessary to provide for the care and supervision of a minor child. His intellectual resources are marginal in understanding the developmental needs of children, and deficient in his ability to respond to those needs appropriately."

During this same time period, March and April 2004, Mother and Father attended parenting classes with Leigh Anne Mefferd ("Mefferd"), a parenting specialist. Despite the fact that both parents attended the classes and actively participated, Mefferd's evaluation indicated that both were severely deficient in their ability to provide an age-appropriate living environment and in their ability

to satisfy the basic needs of their children. Consequently, they did not receive a certificate of completion of the parenting classes. Mother and Father attended another series of parenting classes in November 2004 with a similar result. The report states that Mother and Father "have problems recalling information that has been given to them" and that "[t]hey were not able to pass the class even with the material being presented to them on a first grade level."

On August 13, 2004, DCS filed a petition once again to take B.D.W. into protective custody. To support its petition, DCS cited Dr. Vaughan's report and asserted that it clearly showed that Mother and Father were incapable of caring for their children. The petition also stated that a physician at the Maury Regional Hospital had found several bruises on B.D.W. and a deep cigarette burn on his back. The Juvenile Court granted this petition on the day it was filed, and both children were placed in a foster home. After a September 20, 2004 hearing, the Juvenile Court adjudicated both B.D.W. and B.W.W. to be dependent and neglected. The children remained in the same foster home.

On October 5, 2004, DCS adopted a new permanency plan with a dual goal of reunification and adoption. The permanency plan noted that Mother and Father had been provided with support services from various community agencies, including Family Connections, a Woman's Place, the Family Center, King's Daughters (Early Intervention Program), HUGS, and Tennessee Early Intervention Services (TEIS). The permanency plan indicated that both Mother and Father attended DCS meetings, attended visitation with the children and had a stable home. It indicated a need for yet more parenting classes.

DCS referred Mother and Father to Diane Smith ("Smith"), a registered nurse who contracted to provide parenting classes for New Beginnings, a community service. DCS asked Smith to provide intensive parenting classes for Mother and Father, and to evaluate their parenting ability. Smith also conducted anger management instruction for Father. After several sessions on basic parenting skills with little result, DCS told Smith to end her sessions with Mother and Father and close her file.

In May 2005, the children's permanency plans were revised to reflect a goal of adoption. The primary risk factor remained the parents' inability to adequately provide for the needs of their children. On October 5, 2005, DCS filed a petition for the termination of Mother's and Father's parental rights. On May 26, 2006, the Juvenile Court conducted a hearing on the DCS termination petition. The Juvenile Court heard testimony from several of the persons who had conducted parenting classes for Mother and Father, the DCS case manager, and both Mother and Father.

At the outset, Diane Smith testified about the intensive parenting instruction that she gave Mother and Father in their home. Smith said that she is a registered nurse with an education degree, a master's degree in health care and psychology, and experience as a counselor. She described her sessions with Mother and Father:

A: . . . I have . . . parenting classes that I break down into sessions with each of my parents . . . after my initial visit and my initial observation with – with this – this set of parents.

And I broke them down into the age level that I felt was appropriate. That I could get – that they could understand the information that I was giving to them.

Q. And what was the appropriate age level that you determined?

A. Third grade.

Q. Say it again, please?

A: Third grade. Some of it I had to break down to a first grade level as far as the medical part.

Q. Okay. And what was some of the things that you tried to teach [Mother and Father]?

A. I tried to teach [Mother] the basic needs that children need: bathing, dressing, nutrition, medical care, safety, discipline . . . .

Q. And what did you observe as you tried to teach [Mother] . . .?

A. [Mother] just said over, and over, and over how much she loved her children. And I really realized that she really does love her children, but [Mother] could not retain the information that I – I was giving her.

She could repeat it back to me, but at the end of the session, or 45 minutes later she couldn't remember what I had told her, and she could not repeat back the information I was giving her.

And she told me that she could read some, so I would type it out and fix it in big – like instructions on big pieces of paper, and she still couldn't take the points and understand how to – how to feed a nutritious breakfast or how to dress a child . . . .

Q. What type of interaction did you have with [Father]?

A. [Father] did not participate very much. He did not give me good eye contact. His body language was not appropriate, and he just said, "Yeah, yeah."

He never really participated in conversations.

Smith then said that her very basic parenting instruction did not sink in with either Mother or Father. She had several sessions with Mother and Father and tried to schedule more, but was frustrated by the fact that they did not have a telephone and did not respond to notes taped to their door. Finally, DCS told Smith to close her case file on Mother and Father.

The DCS case manager, Sprowl, testified that, despite the parenting classes and other support services provided to Mother and Father, the primary concern remained "whether the parents would be able to comprehend how to care for their children." Therefore, DCS's goal evolved from reunification to adoption. Sprowl acknowledged that she had "no doubt" that both Mother and Father love their children and had tried to comply with the permanency plans and be able to care for

their children. She also testified that she had no doubt that Mother and Father were not capable of taking care of their children.

Mother testified that she and Father live with Father's aunt, Geraldine Dodd, and asserted that Dodd was available to help them take care of the children.[2] She said that another relative was also available to help. Mother described her experience at the parenting classes:

> Q. What do y'all do when you go there?
> A. We talk, watch TV, and stuff like that.
> Q. Now, when you say you watch TV, you just watch shows?
> A. It's a video. It's about babies.
> Q. Okay. So what are you learning at that class?
> A. I'm learning a whole lot.
> Q. Give me an example of some of the things you have learned since you've been there?
> A. I learned how to feed them. I learned how to change their diapers. I learned how to take care of them.

Mother described walking to visit with the children, or getting a ride with a neighbor. She said that she and Father had done their best to cooperate with DCS. Mother was asked further about the parenting classes:

> Q. Okay. Have you completed the parenting classes?
> A. Do you mean quit them? I'm not going to quit them. I'm going to keep going.
> Q. So they just – you just go to parenting classes forever?
> A. Yes.
> Q. You say that you have learned a lot of things at parenting classes?
> A. Yes, I have.
> Q. What did you learn?
> A. I learned how to change their diapers. I learned how to feed them. I learned how to take care of them when they go outside and everything.

When pressed for specifics, Mother said only that she "learned to watch them play and stuff" and "[w]hat to feed them and stuff like that."

Father testified, and was also asked about the parenting classes. Father first said that he had attended parenting classes for "two or three days" and then said "about two months." He also described the classes:

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[2] Another witness testified that Dodd had four children but "adopted them out."

Q. What did you learn at the parenting classes?
A. I learned how to change a baby's diapers.
Q. How do you change a baby's diaper?
A. Well, if they're wet you would take them undone and you put a new one on, a dry one on then.

* * *

Q. How do you know if it's wet?
A. Just touch it.
Q. Just touch it?
A. Yeah.
Q. What else did you learn at parenting classes?
A. When the poop you do the same thing. You know, got to check them out.
Q. What else did you learn at parenting classes?
A. They teach you to burp the babies. You know, put them on your shoulder and burp them when you feed them.

Father acknowledged that, at the time of the hearing, B.D.W. was three years old and B.W.W. was two years old, so there was little need for burping them. When pressed about what else he had learned in the classes, Father could only say that he "play[ed] with toys with them."

The Juvenile Court also heard testimony from the foster parents regarding the children's adjustment, their substantial special needs, and their visitation with Mother and Father. The foster parents indicated a willingness to adopt both children.

After hearing the testimony, the Juvenile Court took the case under advisement. An order was finally issued on March 15, 2007, terminating the parental rights of both Mother and Father. The Juvenile Court's order included detailed findings of fact outlining the events leading up to the filing of the petition for termination, DCS's efforts to work with Mother and Father, the efforts by Mother and Father to comply with the permanency plans, the parents' mental competence to care for the children, and the children's special needs. Based on these underlying facts, the Juvenile Court found that the following grounds were established by clear and convincing evidence: (1) the parents were mentally incompetent to care for the children, under Tennessee Code Annotated § 36-1-113(g)(8); (2) unremedied conditions persisted that prevented the children from safely returning to their parents' care at an early date, under Tennessee Code Annotated § 36-1-113(g)(3)(A); (3) the parents were in substantial noncompliance with the permanency plan requirements, under Tennessee Code Annotated § 36-1-113(g)(2); (4) the parents had failed to establish a suitable home for the children for a four-month period after removal, despite reasonable efforts by DCS to assist them, under Tennessee Code Annotated §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii); and (5) the parents abandoned the children by willfully failing to pay support in the four-month period before the termination petition was filed, under Tennessee Code Annotated § 36-1-113(g)(1) and § 36-1-

102(1)(A)(i).[3] The Juvenile Court also found by clear and convincing evidence that termination of

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[3]Tennessee Code Annotated § 36-1-113 states in part:

> (g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:
>
> (1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;
>
> (2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4:
>
> (3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
>
> > (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
> >
> > (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
> >
> > (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.
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> > * * *
> >
> > [(8)](B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:
>
> (i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future, and
>
> (ii) That termination of parental or guardian rights is in the best interest of the child.

Tennessee Code Annotated § 36-1-102 states:

> (1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:
>
> (i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;
>
> (ii) The child has been removed from the home of the parent(s) or guardian(s) as a result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child

(continued...)

the parental rights of both Mother and Father was in the children's best interest under Tennessee Code Annotated § 36-1-113(c)(2).[4]

Mother and Father now appeal the order terminating their parental rights. On appeal, both argue generally that the decision to terminate their parental rights was in error because the evidence was insufficient to establish the grounds upon which the Juvenile Court relied.[5]

A biological parent has a fundamental constitutional right to the care, custody, and control of his or her child. ***Troxel v. Granville***, 530 U.S. 57, 65 (2000); ***Nash-Putnam v. McCloud***, 921 S.W.2d 170, 174-75 (Tenn. 1996); ***Hawk v. Hawk***, 855 S.W.2d 573, 578-59 (Tenn. 1993). While this right is fundamental, it is not absolute; the State may abridge parental rights if there is a compelling State interest in protecting the welfare of the child. ***Santosky v. Kramer***, 455 U.S. 745, 747 (1982); ***Nash-Putnam***, 921 S.W.2d at 174-75. In light of the gravity of the consequences of a decision to terminate parental rights, the proceedings are structured to ensure the protection of those rights.

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[3](...continued)

> was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date; . . . .

[4]Tennessee Code Annotated § 36-1-113(c)(2) states:

> (c) Termination of parental or guardianship rights must be based upon:
>
> (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental . . . rights have been established; and
> (2) That termination of the parent's . . . rights is in the best interests of the child.

[5]Mother and Father also argue that reversal is mandated by the Juvenile Court's failure to comply with Tennessee Code Annotated § 36-1-113(k), which provides, "The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing." T.C.A. § 36-1-113(k) (2005). Here, the Juvenile Court entered its order approximately ten months after the hearing. This issue was addressed in the case of ***State v. D.R.***, No. E2000-01381-COA-R3-CV, 2001 WL 1131782 (Tenn. Ct. App. Sept. 25, 2001), in which a juvenile court did not enter its order terminating the parents' parental rights until six months after the hearing. In ***D.R.***, although Rule 34(a) of the Tennessee Rules of Juvenile Procedure provided the means for obtaining relief for clerical mistakes, the appellants sought no relief under the Rule at the trial court level. The appellate court therefore declined to consider the issue on appeal. ***D.R.***, 2001 WL 1131782, at *6 (citing Tenn. R. App. P. 36(a)). In this case, Mother and Father likewise sought no relief under Rule 34(a), and did not raise the issue to the trial court. Under these circumstances, we decline to consider this issue in this appeal.

Proceedings to terminate parental rights in Tennessee are governed by statute. ***See*** T.C.A. § 36-1-113 (2005). A court may terminate parental rights only if it finds (1) the existence of at least one of the statutory grounds for termination and (2) that termination is in the best interest of the child. T.C.A. § 36-1-113(c)(1), (2) (2005). Because the decision to terminate parental rights involves a fundamental constitutional right, the petitioner must prove both of these statutory elements by clear and convincing evidence. T.C.A. § 36-1-113(c) (2005); ***In re Valentine***, 79 S.W.3d 539, 546 (Tenn. 2002); ***In re Audrey S.***, 182 S.W.3d 838, 861 (Tenn. Ct. App. 2005). Evidence meets the "clear and convincing" standard if it "establishes that the truth of the facts asserted is highly probable . . . and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence . . . ." ***In re Audrey S.***, 182 S.W.3d at 861 (citations omitted). Considering this heightened standard, we review the underlying specific factual findings *de novo* upon the record, with a presumption that the findings are correct, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); ***In re Audrey S.***, 182 S.W.3d at 861 n.26. The facts, taken together, must amount to clear and convincing evidence of the elements required to terminate parental rights. The trial court's conclusions of law are reviewed *de novo* with no presumption of correctness. ***In re Adoption of Copeland***, 43 S.W.3d 483, 485 (Tenn. Ct. App. 2000).

We first address the Juvenile Court's finding that Mother and Father were both "mentally incompetent to provide for the . . . care and supervision" of B.D.W. and B.W.W. The statute provides that parental rights may be terminated if the court finds by clear and convincing evidence that "the parent's . . . mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent . . . will be able to assume or resume the care of and responsibility for the child in the near future . . . ." T.C.A. § 36-1-113(g)(8)(B). The statute explicitly states that, for this ground, "no willfulness" on the part of the parent "need be shown to establish that the parental . . . rights should be terminated . . . ." T.C.A. § 36-1-113(g)(8)(C).

The mental incompetence of the parents was also relied on by the Juvenile Court to support the separate ground typically referred to as "persistent conditions;" that the children had been removed from the parents' home for at least six months; that "the conditions which led to the [children's] removal . . . still persist;" that there is "little likelihood that these conditions will be remedied at an early date . . ."; and that the continuation of the parent/child relationship "greatly diminishes the [children's] chances of early integration into a stable and permanent home." T. C.A. § 36-1-113(g)(3)(A). Consequently, we consider these two grounds together.

The record includes much evidence reflecting on the mental incompetence of both Mother and Father, and their inability to care for the boys' needs. Dr. Vaughan's evaluation of both parents was stark and unequivocal. After substantial testing and interaction with Mother and Father, he opined that neither had "the cognitive resources or coping skills necessary to provide for the care and supervision of a minor child." He found that Mother was functioning at the level of a first grade child, and Father was functioning at the level of a second grade child, and both were so lacking in math and reading skills as to be functionally illiterate.

His conclusions were borne out by the experience of the trained counselors who worked with Mother and Father to improve their parenting skills. Parenting instructor Diane Smith testified that, in an effort to teach Mother and Father basic skills such as bathing, dressing, nutrition, medical care, and safety, she broke the information down to a third grade level. Even at that level, she said, Mother could not grasp the information and could not repeat it forty-five minutes later. Father remained disengaged throughout Smith's instructions. Other parenting instructors reported similar experiences, and, despite receiving hours of instruction, neither Mother nor Father could achieve a score even close to sufficient to show successful completion of the parenting classes.

The Juvenile Court's comments on the parents' testimony shows that its impressions were consistent with Dr. Vaughan's opinion and the observations of the counselors and instructors. The Juvenile Court observed that "[w]hen asked to explain to the Court what they learned, all the parents could say was they learned how to feed the children, take care of the children and change diapers." Indeed, all Father could describe learning was changing diapers and burping a child after a bottle, despite the fact that B.D.W. and B.W.W. were three and two years old, respectively, at the time of his testimony. Mother demonstrated a laudable willingness to continue taking parenting classes "forever" if need be. We do not doubt that Mother and Father have striven mightily to overcome their obstacles to parenting competently. Some obstacles, however, simply cannot be overcome. The evidence gives us no reason to hope that either parent's mental competence would improve so that they could care for their children.

Overall, the record fully supports the Juvenile Court's conclusion that DCS had established by clear and convincing evidence the grounds of mental incompetence and persistent conditions. In order to support the termination of parental rights, only one ground need be proven, so long as it is proven by clear and convincing evidence. ***In re D.L.B.***, 118 S.W.3d 360, 367 (Tenn. 2003). Therefore, we need not discuss the remaining grounds found by the Juvenile Court, but will instead go on to consider the statutory element of the best interests of the children.

On appeal, counsel for Mother and Father acknowledges that the testimony indicated that the children were doing well in their foster home and that the foster parents were willing to adopt the boys. He argues, however, that there was no evidence that continuation of the children's relationship with Mother and Father would be detrimental to the children, or that delay in terminating their parental rights would affect the foster parents' willingness to adopt the children. Without explicitly saying so, counsel for the parents appears to argue that, even if there is little hope that Mother or Father would ever be able to care for the children, they would wish to continue a relationship in which the children live with the foster parents and Mother and Father are permitted periodic visits.

It must be acknowledged that this is not a case in which the parents have actively abused the children; to the contrary, it is clear that the parents have made substantial efforts to attend parenting classes, visit their children regularly, and maintain a relationship with their children. Indeed, the parenting plan recites that Mother and Father love their children and attend visitation, and that the children have a "good bond" with the parents. It is understandable for the parents to desire a continuation of the current arrangement.

At this stage in the analysis, however, we must focus on the best interests of B.D.W. and B.W.W. We have observed:

> [T]he statutes on termination of parental rights are established not only to protect a child from a parent who actively abuses him, but also to avoid the harm visited upon a child by spending years in the uncertainty of foster care because his biological parents are unwilling or unable to care for him properly, and yet will not voluntarily relinquish their parental rights so that the child will be available for adoption and a permanent home. Such parents may recognize that they are unable to shoulder the responsibility of caring for the child, but wish for a relationship with the child that does not require caring for the child's needs. The statutory scheme enacted evidences recognition by the Legislature that, unless the parental rights of such a parent can be terminated, a substantial number of children will spend their childhood in foster care, with no possibility of a permanent home.

In re Marr, No. M2001-02890-COA-R3-CV, 2003 WL 152640, at *10 (Tenn. Ct. App. Jan. 23, 2003), *judgment vacated for lack of standing*, 127 S.W.3d 737 (Tenn. 2004). We emphasized that the best interests of the child "must be evaluated in light of the statutory purpose of determining whether the child would be able to safely live with the parents." The ***Marr*** court quoted ***Tenn. Dep't of Children's Services v. D.G.B.***, No. E2001-02426-COA-R3-JV, 2002 Tenn. App. LEXIS 647 (Tenn. Ct. App. Sept. 10, 2002), as follows:

> In the instant case, the trial court found – and the evidence does not preponderate to the contrary – that "an early return to the *care* of their parents" was not possible . . . . This it seems to us is the key to this issue. The legislative intent is not simply to establish a "meaningful relationship" between a child and his or her parents; it is to return the child to the *care* of his parents.

D.G.B., 2002 Tenn. App. LEXIS 647, at *26-27, ***quoted in Marr***, 2003 WL 152640, at *11. We then discussed the impact of the child of continuing the parent/child relationship with a parent who, through no fault of the parent, cannot care for the child:

> [T]he focus of the termination statute is on whether the child can safely live with the parent and have his, that is, the child's, day-to-day needs met. Some of the grounds, such as abuse of the child, are reasons for which the parent can be faulted. Other reasons, such as a parent's mental incompetence, are reasons for which the parent cannot be faulted, but the result nonetheless is that the child cannot safely live with the parent in such a way that the child's needs will be met . . . . For a child who is in foster care, failing to terminate the . . . parent's parental rights means that the child will spend his childhood in foster care, with no permanent home.

Marr, 2003 WL 152640, at *12 (internal citations omitted). Thus, we cannot ignore the legislative intent behind the termination statutes. Clearly, the legislature intended for the focus to be on

achieving a permanent, safe home for children coming into the care of the State. In this case, continuation of the children's relationship with Mother and Father would prevent their adoption and mean that they would spend their childhood in foster care, with no permanent home. That is substantial harm indeed. Therefore, we affirm the trial court's finding that termination of the parental rights of Mother and Father is in the best interests of B.D.W. and B.W.W.

Overall, we must conclude that the evidence in the record fully supports the Juvenile Court's termination of the parental rights of both Mother and Father.

The decision of the trial court is affirmed. The costs of this appeal are taxed to Appellants Nancy Jane Oliver and Billy Wiley, Sr., and their sureties, for which execution may issue if necessary.

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HOLLY M. KIRBY, JUDGE